



DEQ-VALLEY

MAR 21 2011

TO: \_\_\_\_\_  
FILE: \_\_\_\_\_

## COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
VALLEY REGIONAL OFFICE

Douglas W. Domenech  
Secretary of Natural Resources

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David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

### STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ALBEMARLE COUNTY SERVICE AUTHORITY

#### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Albemarle County Service Authority, regarding its sewage collection system, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulation.

#### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "ACSA" means the Albemarle County Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* ACSA is a "person" within the meaning of Va. Code § 62.1-44.3.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "The City" and "Charlottesville" means the City of Charlottesville, a political subdivision of the Commonwealth of Virginia. Charlottesville is a person within the meaning of Va. Code § 62.1-44.3.
4. "CTC" means Certificate to Construct.

5. "CTO" means Certificate to Operate.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "Facility" or "Plant" means the Moores Creek Regional Sewage Treatment Plant owned and operated by RWSA which is located at 695 Moores Creek Lane in Charlottesville, Virginia. The Facility treats and discharges sewage and other municipal wastes for the residents and businesses of the City of Charlottesville, the University of Virginia and portions of Albemarle County.
9. "I&I" means Inflow and Infiltration.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "O&M" means operations and maintenance.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Permit" means VPDES Permit No. VA0025518, which was issued under the State Water Control Law and the Regulation to RWSA on May 1, 2006 and which expires on April 30, 2011.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
15. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner

which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

16. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. "RWSA" means the Rivanna Water and Sewer Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* Rivanna is a "person" within the meaning of Va. Code § 62.1-44.3.
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "STP" means sewage treatment plant.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means the Virginia Pollutant Discharge Elimination System.
24. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
25. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

#### **SECTION C: The Board's Findings of Facts and Conclusions of Law**

1. ACSA owns and operates a sewage collection system, which includes both gravity and force mains, which serves portions of Albemarle County, Virginia. The ACSA collection system is connected to the Rivanna Water and Sewer Authority's (RWSA's) Moores Creek Regional STP. The collection system is comprised of approximately 245 miles of sewer lines, 7860 manholes, and 11 pump stations. The system has 13,826 connections serving a population of approximately 54,358.
2. RWSA owns and operates the Facility and a sanitary sewer transmission system, which includes both gravity and force mains, which serves Charlottesville, the University of

Virginia and portions of Albemarle County, Virginia. RWSA is a wholesale wastewater utility, receiving and treating wastewater from the collection systems owned and operated by ACSA and the City. The Permit authorizes RWSA to discharge treated sewage and other municipal wastes from the Facility, to Moores Creek, in strict compliance with the terms and conditions of the Permit.

3. Moores Creek is located in the James (Middle) River Basin. Moores Creek from its confluence with the Ragged Mountain Dam receiving stream downstream to its confluence with the Rivanna River is listed in DEQ's 303(d) report as impaired for benthics, E. coli and fecal coliform. The impairment is attributed to urban runoff / urban non-point discharges (urbanized-high density area), wildlife other than waterfowl, other non-point source discharges and agriculture.

The Rivanna River is located in the James (Middle) River Basin. Moores Creek is listed as a Tier 1 water. The Rivanna River from its confluence with North/South Fork Rivanna downstream to its confluence with Moores Creek is listed in DEQ's 303(d) report as impaired for benthics and E. coli. The impairment is attributed to non-point source discharges.

Carroll Creek is located in the James (Middle) River Basin. Carroll Creek and its tributaries from its headwaters to its confluence with the Rivanna River are listed in DEQ's 303(d) report as impaired for benthics. The impairment is attributed to non-point source discharges.

4. The design flow of the Facility has been rated and approved as 15 MGD, measured as a monthly average flow.
5. Since 2006, ACSA, the City and RWSA have worked together to conduct flow studies, analyze flow data, assess wet weather limitations, calibrate a transmission system computer model, forecast future dry weather flows through land development projections and identify inflow and infiltration reduction goals across all sewer collection systems connected to the Facility. The goal of these projects is to assure adequate capacity in the transmission and treatment systems with emphasis on addressing unpermitted discharges. The three entities are working cooperatively to upgrade their respective sewer collection systems.
6. In reporting and submitting letters of explanation for unpermitted discharges, as required by the Regulation, the ACSA had (3) unpermitted discharges to State waters from its collection system, one on November 17, 2008 to the Rivanna River, one on April 27, 2009 to an unnamed creek and one on June 22, 2009 to Carroll Creek. ACSA attributed the unpermitted discharges to loss of three phase power to a pump station and two grease blockages that were immediately removed. ACSA is also now addressing I&I problems in its collection system.

7. On April 2, 2010, Department staff met with representatives of ACSA, the City and RWSA to discuss the recent unpermitted discharges, the capacity and collection system restrictions that led to the discharges and the necessary corrective actions undertaken and planned for the future. DEQ requested the three entities each submit a plan and schedule of corrective actions to address I&I and capacity issues in their individual collection systems.
8. On April 21, 2010, VRO issued Warning Letter No. WL-10-04-VRO-001 to ACSA for the (3) unpermitted discharges to State waters on November 17, 2008, April 27, 2009 and June 22, 2009.
9. By letter dated May 10, 2010, ACSA responded to the Warning Letter laying out its programs and procedures in place or planned to address the unpermitted discharges.
10. By letter dated May 27, 2010, ACSA submitted to DEQ a summary of completed or in-progress corrective actions, and a plan and schedule of future corrective actions to address the unpermitted discharges.
11. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
12. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
13. The Department has issued no permits or certificates to the ACSA.
14. Moores Creek, the Rivanna River, and Carroll Creek are surface waters located wholly within the Commonwealth and are “state waters” under State Water Control Law.
15. Based on ACSA’s reports and letters to DEQ, the April 21, 2010 Warning Letter, the April 2, 2010 meeting, and a file review, the Board concludes that ACSA has violated Va. Code § 62.1-44.5 and 9 VAC 9 VAC 25-31-50, because untreated sewage and municipal wastes from ACSA’s collection system have been discharged to State waters and these discharges were not in compliance with a permit or certificate issued by the Board, the Regulation and the Va. Code, as described in paragraph C(6).
16. In order for ACSA to provide for compliance with the Regulation and the Va. Code § 62.1-44.5, DEQ and representatives of the ACSA have agreed to the schedule of compliance, which is incorporated as Appendix A of this Order.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders ACSA, and ACSA hereby agrees to perform the actions described in Appendix A of this Order.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of ACSA for good cause shown by ACSA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations described in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, ACSA admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order
4. ACSA consents to venue in the Circuit Court of the City of Charlottesville for any civil action taken to enforce the terms of this Order.
5. ACSA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by ACSA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority. ACSA does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. ACSA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. ACSA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ACSA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the ACSA intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and ACSA. Nevertheless, ACSA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. ACSA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to ACSA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve ACSA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by ACSA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of ACSA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind ACSA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of ACSA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Albemarle County Service Authority voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5<sup>th</sup> day of August, 2011.



Amy T. Owens, Regional Director  
Department of Environmental Quality



Albemarle County Service Authority voluntarily agrees to the issuance of this Order.

Date: March 17, 2011 By: Gary B. O'Connell Executive Director  
(Person) (Title)  
Albemarle County Service Authority

Commonwealth of Virginia

City/County of Albemarle

The foregoing document was signed and acknowledged before me this 17 day of  
March, 2011, by Gary B. O'Connell who is

Executive Director of Albemarle County Service Authority on behalf of the  
Albemarle County Service Authority.

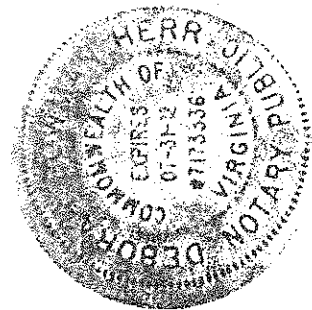
Deborah Brown Herr  
Notary Public

7173336

Registration No.

My commission expires: July 31, 2012

Notary seal:



**APPENDIX A  
SCHEDULE OF COMPLIANCE  
ALBEMARLE COUNTY SERVICE AUTHORITY**

**I&I Corrective Actions**

The Albemarle County Service Authority shall conduct collection system rehabilitation work as laid out in its May 27, 2010 letter, on the following schedule:

**Meadow Creek Basin**

1. **By July 1, 2011**, ACSA shall complete the sewer main relining and manhole rehabilitation currently in progress for the Meadow Creek Basin project.
2. **By December 1, 2011**, ACSA shall complete construction of the sewer main replacement for the Meadow Creek Basin project.

**Crozet Basin**

3. **By October 1, 2011**, ACSA shall complete the Phase 1 rehabilitation work for the Crozet Drainage Basin project.
4. **By October 1, 2011**, ACSA shall complete the Phase 2 SSES of the Crozet Drainage Basin project.
5. **Within 120 days** of completing the Crozet Drainage Basin Phase 2 SSES, ACSA shall submit to DEQ for review and approval a plan and schedule for the completion of the design and construction of the remaining phases of the rehabilitation/repairs identified in the SSES. ACSA shall respond to any comments on the plan and schedule **within 30 days** of receipt of written comments. Upon approval of the plan and schedule, said plan and schedule shall be incorporated by reference into this Order and become enforceable as part of this Order.

**Biscuit Run Drainage Basin**

6. **By July 1, 2012**, ACSA shall complete the SSES for the Biscuit Run Drainage Basin project.
7. **Within 120 days** of completion of the Biscuit Run Drainage Basis SSES, ACSA shall submit to DEQ for review and approval with a plan and schedule for the completion of the design and construction of the remaining phases of the rehabilitation/repairs identified in the SSES. ACSA shall respond to any comments on the plan and schedule **within 30 days** of receipt of

written comments. Upon approval of the plan and schedule, said plan and schedule shall be incorporated by reference into this Order and become enforceable as part of this Order.

#### **Woodbrook Drainage Basin**

8. **By July 1, 2013**, ACSA shall complete the SSES for the Woodbrook Drainage Basin project.
9. **Within 120 days** of completion of the Woodbrook Drainage Basin SSES, ACSA shall submit to DEQ for review and approval a plan and schedule for the completion of the design and construction of the remaining phases of the rehabilitation/repairs identified in the SSES. ACSA shall respond to any comments on the plan and schedule **within 30 days** of receipt of written comments. Upon approval of the plan and schedule, said plan and schedule shall be incorporated by reference into this Order and become enforceable as part of this Order.

#### **Ednam Drainage Basin**

10. **By July 1, 2014**, ACSA shall complete the SSES for the Ednam Drainage Basin project.
11. **Within 120 days** of completion of the Ednam Drainage Basin SSES, ACSA shall submit to DEQ for review and approval a plan and schedule for the completion of the design and construction of the remaining phases of the rehabilitation/repairs identified in the SSES. ACSA shall respond to any comments on the plan and schedule **within 30 days** of receipt of written comments. Upon approval of the plan and schedule, said plan and schedule shall be incorporated by reference into this Order and become enforceable as part of this Order.

#### **PVCC Drainage Basin**

12. **By July 1, 2015**, ACSA shall complete the SSES for the PVCC Drainage Basin project.
13. **Within 120 days** of completion of the PVCC Drainage Basin SSES, ACSA shall submit to DEQ for review and approval a plan and schedule for the completion of the design and construction of the remaining phases of the rehabilitation/repairs identified in the SSES. ACSA shall respond to any comments on the plan and schedule **within 30 days** of receipt of written comments. Upon approval of the plan and schedule, said plan and schedule shall be incorporated by reference into this Order and become enforceable as part of this Order.
14. ACSA shall submit quarterly progress reports to DEQ, with the first report being due **July 10, 2011**. Subsequent progress reports will be due by **October 10, January 10, April 10 and July 10**, until the cancellation of this Order. The quarterly progress reports shall contain:
  - a. a summary of all work completed since the previous progress report in accordance with this Order;

- b. a projection of the work to be completed during the upcoming quarterly period in accordance with this Order; and
  - c. a statement regarding any anticipated problems in complying with this Order.
15. No later than **14 days** following a completion date identified in the above schedule of compliance ACSA shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.
16. **DEQ Contact**

Unless otherwise specified in this Order, ACSA shall submit all requirements of Appendix A of this Order to:

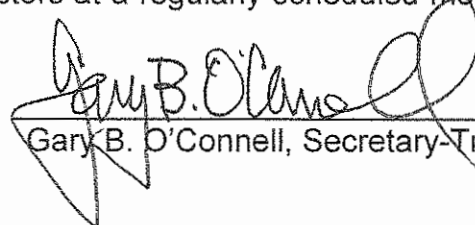
**Steve Hetrick**  
**Enforcement Specialist Sr.**  
**VA DEQ –Valley Regional Office**  
**P.O. Box 3000**  
**Harrisonburg, VA 22801**  
**(540) 574-7833 Phone**  
**(540) 574-7878 Fax**  
**[Steven.hetrick@deq.virginia.gov](mailto:Steven.hetrick@deq.virginia.gov)**

**RESOLUTION AUTHORIZING EXECUTION  
OF THE STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION – ORDER BY CONSENT**

**NOW, THEREFORE, BE IT RESOLVED**, that the Albemarle County Service Authority (ACSA) Board hereby authorizes the Executive Director of the ACSA to execute the State Water Control Board enforcement action consent agreement.

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Certified to be a true copy of a Resolution adopted by the Albemarle County Service Authority Board of Directors at a regularly scheduled meeting on March 17, 2011 by a vote of 4 to 0.

  
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Gary B. O'Connell, Secretary-Treasurer